

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.37 OF 1994.

The Municipal corporation of
City of Poona & Anr. : Appellants.
versus
M/s.Shaikh & Associates & Anr. : Respondents.

Mr.R.G.ketkar for the appellants.
mr.R.V.Govilkar for the respondents.

CORAM : D.G.DESHPANDE, J.

DATED : 10th March 2005.

ORAL ORDER

1. This appeal is filed by the Municipal Corporation of Pune against the order of the Civil Judge, Senior Division, Pune dated 21st April 1992 by which the Application Exhibit 16 filed by the plaintiff/Opponent No.1 was dismissed and, request for passing a decree in terms of Award of the defendant/opponent No.2 was allowed. The proceedings before the trial Court

were initiated at the instance of the appellants, vide Special Civil Suit No.1305 of 1992. It was old Misc. Application No.357 of 1991. By filing application under Section 14(2) of the Arbitration Act for permitting him to file Award under Section 14(2) of the said Act. This was opposed by the respondents on the ground that though he was not full satisfied with the amount of Award by the Arbitrator, he has no ground to challenge the same and, therefore, he accepted the Award. This Misc.Application was opposed by the Municipal Corporation. They filed Application under Section 30 of the Indian Arbitration Act vide Exhibit 16 raising different objections for setting aside the Award. This application was opposed by main contestant M/s.Shaikh & Associates i.e. Respondent No.1 in this appeal. And, therefore, in view of this, the Misc. Application came to be registered as Special Civil Suit.

2. Counsel for the appellants and respondents took me through the entire order and also raised different contentions in support of their respective submissions. However, after going through the impugned judgment it is clear

that the trial Court has reproduced the submissions made by the original plaintiffs and defendants from Paragraphs Nos.18 to 44, out of total 48 paragraphs and, then in last three paras which are very short and cryptic gave his so called reasoning wherein he has stated that "Among the arguments advanced by both the parties, the arguments advanced by the learned advocate for the defendant/opponent No.2 are more convincing and I agree with them."

3. I pointed out to both the advocates that this is not a proper judgment. Because if the Court reproduces arguments from para 19 to 44 and does not deal with them respectively, then ultimate conclusion cannot be accepted. If the Court has taken pains to reproduce the arguments of both the advocates in 26 paragraphs, then it was necessary to deal with each of the submissions separately. The counsel for the respondents however contended that in each para from 19 to 44 the Court has given its findings. I have repeatedly gone through all these paras from 19 to 44 and I am not in agreement with the submissions of Mr.Govilkar that he has given his reasoning or findings on any of the point

raised by respective parties.

4. It is to be noted that from para 3 to 16 the Court has reproduced the case of the parties with reference to their pleadings. In para 17 Issues are referred to and those five Issues are collectively discussed from para 18 onwards. In para 18 the Court has stated about the Issues and that the court has gone through all the papers of arbitration proceedings and documents filed by the parties etc. The reasoning starts from para 19 onwards and, the submissions of plaintiffs' advocate are recorded from Para 19 to para 30 and, the submissions of advocate for the defendants are recorded from para 31 to 44. All these paras are lengthy paras. It is not necessary and possible to reproduce them fully and completely. But the manner in which the paras are written and worded, it is clear that the Court has merely reproduced the arguments of the parties in the respective paras. Nowhere it is stated that whether the he is accepting that particular submission or rejecting it. There are no findings in respect of each of the submissions nor each submissions on one point of both the advocates weighs or cannot weigh and then

accepted and rejected. The judgment, therefore, cannot be upheld and the matter has to be remanded for fresh decision according to law. Because in the absence of any reasoning from the Court regarding number of points raised by the respective advocates, this Court cannot, in the First Appeal, properly deal with the Issues involved. What is challenged before the Court is not only the ultimate order but also the reasoning and conclusion of the trial Court. Those reasonings and conclusions are from para 45 to 47 and, are not at all adequate and each of the submissions made and recorded by the Court should have been considered and, accepted or rejected. Therefore, the impugned order dated 21st April 1993 is set aside. The matter is remanded to the Civil Judge, Senior Division, Pune for giving reasoned order with reference to all the submissions made by the appellants and the respondents i.e. the submissions of the appellants from para 19 to 30 and submissions of the respondents from para 31 to 44. The court may hear the advocates again if found necessary but in any case will decide the matter and pass an order within eight weeks from the receipt of the R&P. The decision will be given on the

material which already forms part of the record.

No order as to costs.

[D.G.DESHPANDE]

10/03/2005

JUDGE.